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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14 ORACLE AMERICA, INC.

15 Case No. CV 10-03561 WHA

16 Plaintiff,

17 v.
18 **ORACLE'S RESPONSE TO THE
19 DECLARATION OF SUSAN A. KIM IN
20 SUPPORT OF ORACLE'S ADMINISTRATIVE
21 MOTION TO SEAL (ECF NO. 1596)**

22 GOOGLE INC.

23 Defendant.
24 Dept.: Courtroom 8, 19th Floor
25 Judge: Honorable William H. Alsup

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1 Oracle respectfully submits the following response to the Declaration of Susan A. Kim In
 2 Support of Oracle's Administrative Motion to Seal Portions of Oracle's Motion *In Limine* #6 Re:
 3 Rule 706 Expert, Professor James Kearl, ECF No. 1596.

4 Google seeks to selectively seal Dr. Kearl's damages numbers that appear in Oracle's
 5 Motion *in Limine* #6 (ECF No. 1582-4 at 1) so that the press and the public only see the damages
 6 number Google likes: \$0. ECF No. 1596 (Kim Decl.) ¶ 2 (seeking to seal two out of three of Dr.
 7 Kearl's damages figures on p. 1, lines 17-19 of Oracle's motion). Allowing Google to seal the
 8 other numbers put forward by Dr. Kearl, which are much closer to the opinion of Oracle's
 9 damages expert, James Malackowski, while publicly disclosing a damages figure of \$0 will leave
 10 the press and the public with the inaccurate impression that Dr. Kearl supports Google's position
 11 when just the opposite is true. Additionally, there is no meaningful distinction for sealing and
 12 confidentiality purposes between Mr. Malackowski's disgorgement damages figure of \$8.8
 13 billion, which Google has publicly filed on the Court's docket (ECF No. 1571-8 (Ex. G to the
 14 Bayley Decl.) at 7), and Dr. Kearl's two non-zero damages figures that would justify Google's
 15 selective request to seal. Although Dr. Kearl's figures differ somewhat from Mr. Malackowski's,
 16 both experts' figures are based on analyses of the same underlying Google revenue and financial
 17 information. Google should not be permitted to selectively disclose information when it helps
 18 Google's case and keep the same information from public view when it does not.

19 Dated: April 6, 2016

20 Orrick, Herrington & Sutcliffe LLP

21 By: /s/ Peter A. Bicks
 22 Peter A. Bicks
 23 Attorney for Plaintiff